

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JERRY KENT ELLIS,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-21-404-G
)	
)	
LONNIE LAWSON,)	
)	
Respondent.)	

ORDER

On April 27, 2021, Petitioner Jerry Kent Ellis, a state prisoner, filed this action seeking federal habeas corpus relief pursuant to 28 U.S.C. § 2241. *See* Pet. (Doc. No. 1); Am. Pet. (Doc. No. 11). In accordance with 28 U.S.C. § 636(b)(1), the matter was referred to Magistrate Judge Shon T. Erwin for preliminary review.

On September 7, 2021, Judge Erwin issued a Report and Recommendation (Doc. No. 16), in which he recommended the amended habeas petition be dismissed based upon Petitioner's failure to state a cognizable due process claim. In the Report and Recommendation, Judge Erwin advised the parties of their right to object to the Report and Recommendation by September 24, 2021. Judge Erwin also advised that a failure to timely object would constitute a waiver of the right to appellate review of the factual findings and legal conclusions contained in the Report and Recommendation.

As of this date, no party has submitted an objection to the Report and Recommendation or sought leave for additional time to do so.


CONCLUSION

Accordingly, the Report and Recommendation (Doc. No. 16) is ADOPTED in its entirety. Respondent's Motion to Dismiss (Doc. No. 14) is GRANTED, and this action is DISMISSED. A separate judgment shall be entered.

Rules 1(b) and 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts require the Court to issue or deny a certificate of appealability when it enters a final order adverse to a petitioner. A certificate of appealability may issue only upon "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Further, "[w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484.

Upon review, the Court concludes that the requisite standard is not met in this case. Thus, a certificate of appealability is DENIED.

IT IS SO ORDERED this 29th day of October, 2021.



CHARLES B. GOODWIN
United States District Judge